

borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;

(3) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(4) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;

(5) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower's circumstances;

(6) Communicating on behalf of a mortgage loan originator that a written offer has been sent to a borrower or prospective borrower without providing any details of that offer; or

(7) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(i) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(ii) An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

For Compensation or Gain.

(a) An individual acts "for compensation or gain" within the meaning of §3400.103(c)(2)(ii) if the individual receives or expects to receive in connection with the individual's activities anything of value, including, but not limited to, payment of a salary, bonus, or commission. The concept "anything of value" is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan.

(b) An individual does not act "for compensation or gain" if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual's activities.

APPENDIX B TO 24 CFR PART 3400

ENGAGING IN THE BUSINESS OF A LOAN ORIGINATOR: COMMERCIAL CONTEXT AND HABITUALNESS

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree

of habitualness or repetition is considered to be "engaged in the business of a loan originator." An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to "engage[e] in the business of a loan originator" may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This Appendix provides examples to aid in the understanding of activities that would not constitute engaging in the business of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 3400. For purposes of the examples below, the term "loan" refers to a "residential mortgage loan" as defined in §3400.23 of this part.

Not Engaged in the Business of a Mortgage Loan Originator. The following examples illustrate when an individual generally does not "engage in the business of a loan originator":

(a) An individual who acts as a loan originator in providing financing for the sale of that individual's own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(b) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(c) A parent who acts as a loan originator in providing loan financing to his or her child.

(d) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in §3400.103(e)(6) of this part are met.

(e) If all applicable conditions in §3400.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(f) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

APPENDIX C TO 24 CFR PART 3400

INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a SAFE Act-compliant mortgage loan originator license. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part 3400. For purposes of the examples below, the term "loan" refers to a residential mortgage loan as defined in § 3400.23 of this part.

(a) An individual who is a loan processor or underwriter who must obtain and maintain a state loan originator license includes:

(1) Any individual who engages in the business of a loan originator, as defined in § 3400.103 of this part;

(2) Any individual who performs clerical or support duties and who is an independent contractor, as those terms are defined in § 3400.23;

(3) Any individual who collects, receives, distributes, or analyzes information in connection with the making of a credit decision and who is an independent contractor, as that term is defined in § 3400.23; and

(4) Any individual who communicates with a consumer to obtain information necessary for making a credit decision and who is an independent contractor, as that term is defined in § 3400.23.

(b) A state is not required to impose SAFE Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (*i.e.*, the loan processor's or underwriter's activities do not include, *e.g.*, offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with § 3400.103(a) (State licensing of loan originators); or is not required to be licensed because he or she is excluded from the licensing requirement pursuant to §§ 3400.103(e)(2) (time-share exclusion), (e)(5) (federally registered loan originator), (e)(6) (government employees exclusion), or (e)(7) (nonprofit exclusion).

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in accordance with § 3400.103(a) (State licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is not involved in the receipt, collection, distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with § 3400.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under § 3400.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

APPENDIX D TO 24 CFR PART 3400

ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

This Appendix D clarifies the circumstances in which the SAFE Act requires a licensed attorney who engages in loan origination activities to obtain a state loan